**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

SUMMONS FOR JUDGMENT NO. 952 OF 2004

IN

SUIT NO. 2775 OF 2004

Reuters India Pvt. Ltd,. .. Plaintiff

vs.

UJLK Securities

Pvt. Ltd,. .. Defendants.

Mr. Padmaja Dholakia a/w Vandana Gupte

i/by Dholakia Gupte & Co. for plaintiff.

Mr. B.G. Wadhwa for defendants.

**CORAM : S.U.KAMDAR, J.**

**DATE : 19th OCTOBER, 2005.**

P.C.

. The present suit is filed for the recovery of a sum of Rs. 1,50,881.25. The claim raised is in respect of the invoices for the period 2000 to 2002. The said fact is clear from page no. 37 which shows outstanding statement as per plaintiffs. The learned counsel for the plaintiff fairly concedes that in the particulars of claim the year 2001 is wrongly mentioned and it should be read as 2000. On perusal of the invoices details of which

are set out at page no. 37, it is clear that the claim in respect of the invoices upto 20.7.2001 is barred by law of limitation because the suit is filed on 24.8.2004 which is beyond the period of three years from the date of the said invoice. In so far as the subsequent invoices from 1.10.2001 to 1.1.2002 is concerned, it is the case of the defendant that the agreement has already been terminated by a letter dated 31.8.2001. The learned counsel for the plaintiff has, however, relied upon Section 22 of the Limitation Act and has contended that non-payment of the amount under the invoice during the subsistence of the contractual period is a continuous breach and continuous cause of action and thus the cause of action exists every day during which the contract was in operation. It is not possible to accept the contention as it is settled law that the claim for recovery of the money arises on the due date and it is not continuous cause of action for giving fresh lease of cause of action. In that view of the matter, the said claim is prima facie barred by law of limitation.

2. Subsequent two invoices i.e. dated 1.10.2001 and 1.1.2002 is in respect of the notice period which is in the form of liquidated damages. It is well settled that claim for liquidated damages cannot be awarded unless the same is proved by the party claiming the same. In that view of the

matter, I find that triable issues arise in the present case. Summons for judgment dismissed. Unconditional leave granted to the defendant to defend the suit.

3. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.